

The opinion in support of the remand being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 54

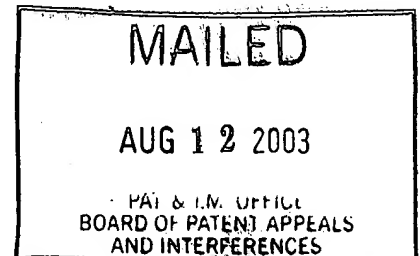
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD H. HALL
and THEODORE W. SELBY

Appeal No. 2002-1582
Application 09/172,577

ON BRIEF



Before COHEN, MCQUADE, and NASE, Administrative Patent Judges.
MCQUADE, Administrative Patent Judge.

REMAND TO THE EXAMINER

We remand this application to the examiner for a second time under the authority of 37 CFR § 1.196(a) and MPEP § 1211 for action consistent with the following remarks.

In our first remand (Paper No. 47), we directed the examiner to:

a) issue a supplemental answer stating whether or not the declarations filed subsequent to final rejection on June 24, 2002 (Paper No. 38) and August 30, 2002 (Paper No. 42) were entered, and, if so, explaining the examiner's position on the merits of the declarations vis-a-vis the rejections on appeal; and

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b) append to the supplemental answer a full English language translation of Japanese Patent Document 2-82304 which is applied to reject certain of the appealed claims.

On remand, the examiner issued a supplemental answer (Paper No. 49), with technical material appended thereto, indicating that the declaration filed on June 24, 2002 (Paper No. 38) was refused entry, and that the declaration filed on August 30, 2002 (Paper No. 42) was entered but not persuasive. The supplemental answer made no mention of, and did not have appended thereto, a full English language translation of Japanese Patent Document 2-82304.

In response, the appellants filed a supplemental reply brief (Paper No. 50), a petition (Paper No. 51) seeking entry and consideration of the declaration filed June 24, 2002 (Paper No. 38), and a request (Paper No. 52) that the examiner officially cite the material appended to the supplemental answer and the material appended to the unentered declaration.¹ The record does not indicate that any of these items has been considered.


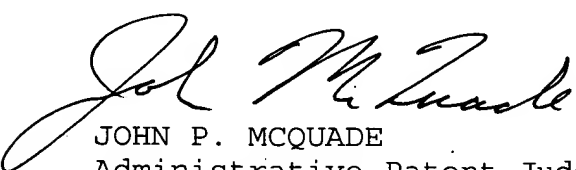
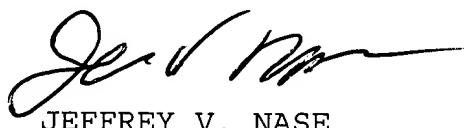
¹ Responsive to an observation in the first remand, the appellants also filed a paper (Paper No. 53) regarding the handling of two earlier filed papers (Paper Nos. 33 and 46) relating to a request for withdrawal of an associate attorney. Any continuing confusion surrounding this matter should be resolved in a suitable manner.

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On remand, the examiner is directed to take appropriate steps to ensure that the supplemental reply brief, the petition and the request for official citation are duly considered in accordance with USPTO practice. The examiner is also directed to make of record a full English language translation of Japanese Patent Document 2-82304 and to mail a copy thereof to the appellants.

The application, by virtue of its "special" status, requires immediate action, see MPEP § 708.01, item (D). It is important that the Board of Patent Appeals and Interferences be promptly informed of any action affecting the appeal in this case.

REMANDED

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IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
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JOHN P. MCQUADE)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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